

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PHILLIP CURTIS COLLICOTT
also known as PHILLIP C.
COLLICOTT,

3:12-CV-01504-BR

OPINION AND ORDER

Plaintiff,

v.

MAX WILLIAMS, Director of
D.O.C.; MR. NOOTH; MR. GEER;
BUSINESS OFFICE;
ADMINISTRATION; MAIL ROOM,

Defendants.

PHILLIP CURTIS COLLICOTT
#18822244
Snake River Correctional Institution
777 Stanton Blvd
Ontario, OR 97914-8335

Plaintiff, *Pro Se*

ELLEN ROSENBLUM
Attorney General
SHANNON M. VINCENT
Assistant Attorney General
1162 Court Street N.E.
Salem, OR 97301
(503) 947-4700

Attorneys for Defendants

BROWN, Judge.

This matter comes before the Court on the Ninth Circuit's Referral Notice, Case No. 15-35185, referring Plaintiff's appeal to this Court for the sole purpose of determining whether Plaintiff's "*in forma pauperis* status should continue for [his] appeal or whether the appeal is frivolous or taken in bad faith."

The Court concludes Plaintiff's *in forma pauperis* status should not continue for appeal.

BACKGROUND

On August 20, 2012, Plaintiff Phillip Curtis Callicott filed a Complaint in this Court pursuant to 42 U.S.C. § 1983 in which he alleged Defendants violated his rights under the Fifth and First Amendments as well as the Due Process Clause of the United States Constitution because (1) they do not provide inmates with "notice of the amount of money in the Inmate [Welfare] Fund (IWF) and where it's spent" and (2) at some point they "denied" Plaintiff the book *Prison Profiteers*.

On September 19, 2013, Defendants filed an Unenumerated Rule 12(b) Motion to Dismiss for Failure to Exhaust and a Motion for Summary Judgment in which Defendants sought dismissal of Plaintiff's claim related to the Inmate Welfare Fund (IWF) for failure to exhaust and summary judgment on Plaintiff's claim related to the denial of *Prison Profiteers*.

On January 31, 2014, the Court entered an Opinion and Order in which it granted Defendants' Unenumerated Rule 12(b) Motion to Dismiss for Failure to Exhaust and denied Defendants' Motion for Summary Judgment related to Defendants' denial of the book *Prison Profiteers*.

On March 10, 2014, Plaintiff filed a Motion to Withdraw his First Amendment Claim related to Defendants' denial of the book *Prison Profiteers*. On March 12, 2014, the Court granted Plaintiff's Motion.

On November 6, 2014, Plaintiff filed a Notice of Appeal seeking review of the portion of the Court's January 31, 2014, Opinion and Order in which the Court granted Defendants' Motion to Dismiss for Failure to Exhaust.

On March 12, 2015, the Ninth Circuit, as noted, referred Plaintiff's appeal to this Court for the sole purpose of determining whether Plaintiff's "*in forma pauperis* status should continue for [his] appeal or whether the appeal is frivolous or taken in bad faith."

In its January 31, 2014, Opinion and Order the Court concluded Plaintiff failed to exhaust his administrative remedies as to his claim related to the IWF. As the Court noted, the Prison Litigation Reform Act (PLRA) provides in pertinent part: "No action shall be brought with respect to prison conditions under Section 1983 of this title, or any other Federal law, by a

prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Exhaustion is mandated regardless of the relief offered through the prison administrative procedures. *Booth v. Churner*, 532 U.S. 731 (2001). Here it is clear that Plaintiff was required to exhaust his administrative remedies and did not do so.

CONCLUSION

For these reasons, the Court concludes Plaintiff's appeal of the Court's January 31, 2014, Opinion and Order granting Defendants' Unenumerated Motion to Dismiss is frivolous, and, therefore, Plaintiff's *in forma pauperis* status should not continue for Plaintiff's appeal.

IT IS SO ORDERED.

DATED this 17th day of March, 2015.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge